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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re P.H., a Person Coming Under the
Juvenile Court Law.

H045859
(Santa Clara County
Super. Ct. No. JD019890)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

A.H. (mother) appeals from a juvenile court order terminating her parental rights to her nine-year-old daughter, P.H., and selecting adoption as P.H.'s permanent plan pursuant to Welfare and Institutions Code section 366.26.¹ There is no dispute here that P.H. is adoptable, and mother concedes that she is unable to care for her.² The sole question posed on appeal is whether the juvenile court abused its discretion when it

¹ All further statutory references are to the Welfare and Institutions Code.

² P.H.'s father did not participate in the dependency proceedings and is not a party to this appeal.

determined that mother failed to establish that terminating her parental rights would be detrimental to P.H. because P.H. would benefit from a continuing parental relationship with her mother through visitation under a legal guardianship plan. (§ 366.26, subd. (c)(1)(B)(i).) We find no error and affirm the juvenile court's order.

I. FACTS AND PROCEDURAL BACKGROUND

P.H. has twice been a dependent of the juvenile court. In late 2009, as an infant she was made a dependent because of mother's inability to care for her due to mother's severe mental health problems. P.H. was placed with caregivers, who provided a home for her until late 2010. The court dismissed the dependency case in 2011 after mother successfully participated in court-ordered reunification services. From 2010 to 2017, P.H. was in mother's custody. However, during that time, P.H. also continued to have contact with her former caregivers and even lived with them—at some points as much as five days in the week—because mother was unable to take P.H. to school due to mother's mental illness. In approximately March 2017, mother prevented P.H. from contacting her caregivers and also removed P.H. from her elementary school. Although mother placed P.H. in another school, mother failed to take her to school consistently.

In May 2017, P.H. again entered into protective custody after the Santa Clara County Department of Family and Children's Services (the Department) filed a section 300 petition.³ The Department petitioned the court based on a determination that, due to her "chronic mental health issues," mother was unable to keep P.H. safe and to meet

³ Section 300, subdivision (b)(1) authorizes dependency jurisdiction if a child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).) Section 300, subdivision (c) authorizes dependency jurisdiction if a child "is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care." (§ 300, subd. (c).) The juvenile court sustained the Department's petition under both of these provisions.

P.H.'s mental health needs. P.H.'s treatment team noted P.H. suffered from certain mental issues, including a possible diagnosis of attachment disorder, but also stated that her behaviors were "environmentally triggered versus organically" triggered. In July 2017, the juvenile court sustained the Department's petition.

P.H. was placed with the same caregivers who had cared for her during the prior dependency proceeding. The juvenile court ordered mother to participate in reunification services and to submit to two psychological evaluations. In one of those psychological evaluations, the psychologist noted that mother suffered from a multitude of mental health conditions, including bipolar disorder and personality disorder, and that she was both mentally and emotionally unstable. The psychologist noted mother's emotional functioning was "clearly impaired" and that "[m]any professionals have supported the contention that the mother lacks insight into her role of triggering" P.H. The psychologist further stated that there was evidence mother was "self-focused" on her own trauma "to the detriment of her child." In addition, the psychologist concluded that P.H. had been improving since being removed from her mother, and that "her plethora of mother identified 'medical concerns' are no longer present (or likely never were) and [P.H.] is no longer missing school, is eating properly and she has an age typical bedtime."

A second court-appointed psychologist found that mother was unable to care for P.H. due to mother's mental health and personality issues, including borderline personality disorder. The psychologist stated that, due to her borderline personality disorder, mother could only care for her own needs. The psychologist observed that "[w]henever she did not know what to do or she had enough of the child's behavior, [mother] handed [P.H.] over to other people to care for the child so that she did not need to be there for the child. . . . Whenever she did that, it became an abandonment issue for the child and it is very harmful to the child's long-term mental health." However, the psychologist noted that it was still helpful for P.H. to continue having supervised visits with mother "because of the child's fragile mental health state at this time."

Based on these two psychological evaluations, the Department sought to terminate mother's reunification services. Regarding visitation, the social worker reported to the juvenile court that the visitation therapist had conveyed "ongoing issues" with visitation, including that mother talked about her own problems in P.H.'s presence. The social worker requested that visitation be reduced to once per week, given that P.H. had asked for once-a-week visitation, and that P.H. "appears to be able to cope better emotionally with once per week visitation." In December 2017, the juvenile court terminated reunification services and reduced visitation from twice per week to once per week for two hours in a therapeutic setting.

The juvenile court ordered a section 366.26 hearing to determine the permanent plan for P.H. The Department prepared a hearing report in which it recommended that mother's parental rights be terminated, and that P.H. "be freed for adoption." In the report, the social worker observed that P.H. "is doing better emotionally recently." While mother can "be appropriate with [P.H.] at times during supervised visitation, . . . she also continues to give [P.H.] conflicted messages about their relationship which contributes towards [P.H.]'s anxiety." Mother "continues to not understand [P.H.]'s emotional needs . . . and [mother] tends to focus on her own needs." The social worker observed that nine-year-old P.H. had been forced to take "a caregiver role" towards her adult mother.

The following month, the social worker for the Department submitted an "addendum" to her prior report to address why she believed that P.H. "does not receive much benefit from her relationship with" mother. The social worker noted that P.H. had started refusing to attend visitation in September 2017 and had missed several visits. Furthermore, the social worker noted that the caregivers had reported that, since June 2017, P.H. had nightmares or wet the bed following visits with mother. Following the juvenile court's reduction of visitation to once a week, the caregivers observed that P.H. was less agitated following mother's visits. The social worker stated that there "is

affection” between mother and child but noted that mother was sometimes “physically and emotionally exhausted or overwrought” during visits.

The social worker observed that P.H.’s adjustment disorder was partially due to “learned anxiety from lack of consistency and going back and forth between home environments.” The current caregivers have stated that “they will continue to facilitate visitation [with mother] to the extent that it is in [the] best interest of [P.H.] after adoption is finalized.” Even if there were no visits with mother, the social worker believed P.H. would adjust and “any sense of loss” from her relationship with mother would be “outweighed by the benefits of adoption that she will receive.”

In May 2018, the juvenile court held a contested section 366.26 hearing. The assigned social worker, who had prepared the reports described above, testified to her expertise in permanency planning. Her reports were admitted into evidence. Mother was the only other witness to testify at the hearing. Mother agreed with the placement of P.H. with her caregivers because they could offer P.H. “stability” and “a great education.” She acknowledged that her parental relationship with P.H. was “a bit strained.” Mother thought it was “unclear” what effect her visits had on P.H.’s mental health. However, mother wanted to stay in her life so that P.H. would not feel that she had been abandoned by her mother. Mother stated, “abandonment would lead to anger. It may lead to more issues [for P.H.] . . .” Guardianship gives her a “reason not to be angry . . . that mom didn’t give up on her.”

After taking evidence and hearing argument, the juvenile court issued its ruling. It found by clear and convincing evidence that P.H. was adoptable and, as described in the social worker’s report, a “beautiful, intelligent, engaging, imaginative, caring, and articulate” girl. The juvenile court further noted that everyone agreed that the mother had maintained consistent visitation and that the visits had “been loving.” The juvenile court emphasized that the relationship between mother and P.H. “is defined by love.”

However, the juvenile court also found that the relationship between mother and P.H. is “not the type of relationship described in the cases” finding an exception to the mandatory termination of parental rights and placement for adoption under section 366.26. Assessing the applicability of the parent relationship exception set out in section 366.26, subdivision (c)(1)(B)(i), the juvenile court stated the “bigger issue” is whether the parent-child relationship promoted P.H.’s wellbeing “to such a degree as to outweigh the benefit of a permanent home with the caregivers.” The juvenile court considered P.H.’s age and determined that she was “still very young, and it would not be ideal for her to be in a situation that is not permanent given she’s still a decade away from the age [of] maturity.”⁴ The juvenile court further noted that P.H. had spent a large amount of time with mother between 2010 and 2017, and that this factor weighed “slightly in favor of the mother.” However, the court also noted that, during that time, mother was not able to consistently care for P.H. without significant assistance from the caregivers.

In terms of the interaction between mother and P.H., the juvenile court noted that the mother and P.H. love each other, “but it’s also apparent that it is a challenging relationship” for [P.H.] “[P.H.] has refused phone calls with her mother. She refused some visits with her and missed five visits between September and November of last year. The frequency of visits had to be reduced in December because [P.H.] was exhibiting anxiety and bedwetting and anger issues, and it’s reported that when the visits were reduced, her emotional state and behavior around visitation did see improvement.” The visitation logs also showed that P.H. was taking on a “caretaker” role for her mother,

⁴ The juvenile court stated it was applying the four factors set forth in *In re Autumn H.* (1994) 27 Cal.App.4th 567 (*Autumn H.*), to determine whether the parent-child relationship promoted P.H.’s wellbeing. In *Autumn H.*, the court noted that the exception “must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*Id.* at p. 576.)

which was a “burden” on P.H. The juvenile court found that P.H. had suffered anxiety and behavioral problems from not knowing what the future holds in terms of custody.

The juvenile court ultimately concluded that it did not “believe that the evidence supports [the conclusion that the] particular needs of [P.H.] demonstrate that maintain[ing] the relationship outweighs the benefits of adoption. To the contrary. The stability of permanency that would come from adoption [would] appear to benefit [P.H.]” The juvenile court terminated mother’s parental rights and ordered P.H. to be placed for adoption. Mother timely appealed the juvenile court’s order.

II. DISCUSSION

Mother argues on appeal that the juvenile court erred in its application of the parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i) (hereafter § 366.26(c)(1)(B)(i)). While mother concedes that she cannot care for P.H. now or in the future, she contends that the juvenile court should not have terminated her parental rights and placed P.H. for adoption. In the mother’s view, because of P.H.’s mental health issues, P.H. would benefit from continuing the relationship with her mother through visitation under a legal guardianship plan. The Department argues that substantial evidence supports the juvenile court’s conclusion that the parental relationship with mother is not beneficial to P.H., and the juvenile court did not abuse its discretion in finding the exception did not apply.

Section 366.26 sets out the process and standards for “a hearing specifically designed to select and implement a permanent plan for the child.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 304.) When reunification efforts with the parent fail, as they have in this case, “the focus shifts to the needs of the child for permanency and stability.” (*Id.* at p. 309.) “By the time dependency proceedings have reached the stage of a section 366.26 hearing, there have been multiple specific findings of parental unfitness.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253.) Although the juvenile court has several choices at the section 366.26 hearing (also called the permanency planning

hearing) “[t]he Legislature has . . . determined that, where possible, adoption is the first choice.” (*In re Celine R.* (2003) 31 Cal.4th 45, 52–53 (*Celine R.*)). Thus, pursuant to subdivision (c)(1) of section 366.26, “[w]henver the court finds ‘that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.’ ” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.)

Section 366.26 sets out in subdivision (c)(1)(B) a number of “exceptions to the general rule that the court must choose adoption where possible.” (*Celine R.*, *supra*, 31 Cal.4th at p. 53, italics omitted.) “The statutory exceptions merely permit the court, in exceptional circumstances [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*, italics omitted.) The exception at issue in this appeal—the parental relationship exception—applies when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child [because] [¶] [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)⁵

This inquiry contains two subsidiary issues: first, whether a beneficial parental relationship exists; and second, whether the existence of that relationship constitutes a compelling reason for determining that termination would be detrimental to the child. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 (*Bailey J.*)).

We apply a hybrid standard of review to the juvenile court’s determination that the beneficial parent-child relationship exception does not apply. We review factual findings, including whether a beneficial parental relationship exists, for substantial evidence. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) By contrast, the juvenile court’s determination whether the relationship is a “compelling reason” for finding detriment to the child if parental rights were terminated is “a ‘quintessentially’

⁵ Here, there is no dispute that mother has maintained regular visitation.

discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption.” (*Id.* at p. 1315.) We review this aspect of the juvenile court’s decision for abuse of discretion. (*Ibid.*)

The party seeking to establish the parental relationship exception to termination of parental rights—in this case, mother—bears the burden to produce evidence in favor of the exception. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) To meet this standard, the parent-child relationship must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The exception, however, “does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*), italics added).

As this court has noted, “[i]nteraction between [a] natural parent and child will always confer some incidental benefit to the child. . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Jasmine D., supra*, 78 Cal.App.4th at p. 1350.)

“The juvenile court may reject the parent’s claim [that the exception applies] simply by finding that the relationship maintained during visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. The court

must make a more substantial and affirmative finding if it decides to apply the exception and preserve parental rights. It must ‘state its reasons in writing or on the record,’ and those reasons must be ‘compelling.’ (§ 366.26, subd. (c)(1).)” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “ ‘The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’ ” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, citation omitted.)

After a careful review of the record, we conclude that substantial evidence supports the juvenile court’s decision that P.H.’s relationship with mother does not constitute a beneficial relationship for P.H. that would support the application of the parental relationship exception. Although mother had positive interactions during many of her visits with P.H., the record also reflects that P.H. was often negatively affected by her visits with mother. Moreover, there is evidence—including from the psychologists that examined mother—that mother was triggering P.H.’s outbursts and even P.H.’s mental health issues.⁶ Mother contends that she has satisfied her burden to show the exception applies given that P.H. is nine years old and has spent the “majority of her life in mother’s care.” However, there is ample evidence that P.H. spent significant time with her prior caregivers even during the time that mother had custody of P.H., and that others assumed parental duties for mother.

Mother also contends that, although her relationship with P.H. is “made up of both positive and negative qualities,” it would be detrimental to P.H. to sever their relationship because of P.H.’s “Adjustment Disorder” and “abandonment issues.” Mother points to

⁶ Although mother argues that her absence would “trigger minor’s mental health issues,” one psychologist was concerned that mother had created many of P.H.’s health issues, given that [following her removal from mother’s care] P.H.’s “plethora of mother identified ‘medical concerns’ are no longer present (or likely never were).”

P.H.’s mental health issues that were “attributed to minor being cut off from important support persons in her life.” However, mother fails to acknowledge that she was the one who decided to isolate P.H. from her support system by forbidding her from contacting former caregivers and by changing her school, and at least one psychologist found that mother herself triggered abandonment issues in P.H. by handing her to the care of other people.

The record clearly establishes that mother loves her daughter, has worked to maintain a relationship with her, and does not want P.H. to feel abandoned. However, the record also contains substantial evidence that mother’s interactions with P.H. caused P.H. psychological harm and anxiety. There is no dispute that P.H.’s caregivers will provide her with a loving and stable home, and that she has been thriving under their care. The record amply supports the juvenile court’s finding that the benefits to P.H. of continuing her relationship with mother do not outweigh the undisputed benefits of permanence and stability that will flow from her adoption. (See *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200.) For these reasons, the juvenile court did not abuse its discretion in ruling that mother did not carry her burden of establishing a “compelling reason for determining that termination would be detrimental.” (§ 366.26, subd. (c)(1)(B).)

Mother argues that legal guardianship, rather than adoption, should be the permanent plan.⁷ As we have already noted, adoption is the legislatively preferred option for dependent children whose parents fail to reunify within the statutorily prescribed time period. (§ 366.26, subd. (b)(1).) There is no dispute here that P.H. is adoptable. When the juvenile court finds a dependent child adoptable, it is obligated to select a permanent plan in a given order of preference. (§ 366.26, subd. (b).) Mother bears the burden of

⁷ At a permanency plan hearing, the juvenile court may order one of three alternatives: adoption, guardianship, or long-term foster care. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.) Mother argues in favor of guardianship and does not discuss foster care.

showing why a lower-preference option, such as guardianship, should be ordered—a step the juvenile court can take only if mother can demonstrate that a statutory exception under section 366.26(c)(1)(B) applies. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528.) Mother argues only for the parental relationship exception, and we have already determined the juvenile court did not abuse its discretion in rejecting the application of this exception.

“[G]uardianship is not in the best interests of children who cannot be returned to their parents.” (*Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1419.) Mother acknowledges that she will not be able to take care of P.H. in the future. Here, because we have already concluded that the juvenile court did not abuse its discretion in ruling that the exception set out in section 366.26, subdivision (c)(1)(B)(i) does not apply, “it necessarily follows that the juvenile court correctly determined that adoption was the appropriate permanent plan” for P.H. (*Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1420.)

For these reasons, the juvenile court did not err when it terminated mother’s parental rights and selected adoption as P.H.’s permanent plan rather than guardianship.

III. DISPOSITION

The judgment is affirmed.

DANNER, J.

WE CONCUR:

GREENWOOD, P.J.

GROVER, J.

In re P.H.; DFCS v. A.H.
H045859